

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

KEVIN M. BURKE
SECRETARY

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3181 Fax: (978) 567-3121

MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2006-100
321 Winthrop Street
Medford, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Medford Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by American Legion Post 45 (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 321 Winthrop Street, Medford, MA.

B) Procedural History

By written notice dated February 10, 2006 and received by the Appellant on March 1, 2006, the City of Medford Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the Order is located at 321 Winthrop Street, Medford, MA. The Appellant filed an appeal of said Order on April 1, 2006. The Board held an initial hearing on this matter on July 11, 2007. Subsequently, the board continued the case for further information and hearing until October 9, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: John J. Shea. Appearing on behalf of the Medford Fire Department was: Chief Frank Giliberti, Jr. and Medford Building Inspector John Bavuso.

Present for the Board were: Maurice Pilette, Chairman; Paul Donga, Vice Chairman; Stephen D. Coan, State Fire Marshal; Chief Thomas Coulombe; Peter Gibbons; and John J. Mahan. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

At the October 9, 2007 hearing, it was noted that there were variations in the Board hearing panel membership from the first hearing in July. Particularly, member Thomas Coloumbe was not present at the July 11, 2007 hearing. The parties did not object to continuing the hearing and final determination with the current panel with the understanding that member Thomas Coloumbe would have an opportunity to review the entire record prior to the final determination.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Medford Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Application for Appeal
3. Order of Notice of the Medford Fire Department
4. Exterior Photographs of the Facility (A-E)
5. Estimate for Sprinklers by LVR Corporation
6. Certificate of Inspection (exp. 1/16/2007)
7. Legislature's Fact Sheet on Fire Safety Legislation
8. Floor Plan of Members Area
9. Floor Plan of Function Hall
10. Notice of Pre-Hearing Status Conference to the Parties
11. 2nd Notice of Pre-Hearing Status Conference to the Parties
12. Notice of Hearing to Appellant
13. Notice of Hearing to Medford Fire Department
14. Function Contract
15. Nature/Frequency of Rentals
16. Fire Department Pictures of Facility
17. Letter to Parties from the Board regarding need for additional information
18. 2nd Notice of Hearing to Appellant
19. 2nd Notice of Hearing to Medford Fire Department
20. New Floor Plans for Facility

E) Subsidiary Findings of Fact

- 1) By written notice dated February 10, 2006 and received by the Appellant on March 1, 2006, the Medford Fire Department issued an Order of Notice to the Appellant requiring the installation of a system of automatic sprinklers in a building located at 321 Winthrop Street, Medford, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½. The Appellant filed an appeal of said Order on April 1, 2006.
- 2) The Appellant, the American Legion Post 45, operates a two level brick masonry building with facilities for public assembly. A large portion of the upper level of this building consists of an area described as the "main function hall" with approximate dimensions of 71' x 48' and a lobby

area with dimensions of 37' x 29', and a small coatroom. The basement floor consists of an area described as a "members' bar" or lounge. There is a small building that is attached to the main building.

- 3) There have been several Certificates of Inspection issued for this facility. The most recent Certificate of Inspection issued by the City of Medford (expiration date of 1/16/2007) indicates a current use group classification of "A-3" with a total capacity of 460 persons throughout the facility. This capacity is broken down as follows: occupant load of 100 persons for the basement level and 360 persons for the first floor level.
- 4) The basement level lounge area features a fully stocked bar, including a full bar, tables, chairs, pool table and dartboard. This portion of the facility is open on a routine basis for members and their guests. The representatives of the Appellant did not present any evidence which would contradict a finding that said area is anything other than a portion of the building used or designed as a bar.
- 5) According to the testimony of the representatives of the Appellants, there is also a small building attached to the main building. However, Appellant indicated that this building is not used or designed for public assembly occupancy relating to a nightclub, dancehall, discotheque, bar or similar usage.
- 6) With respect to the first floor function area, it was the Appellant's contention that this area is not subject to the sprinkler law based upon prior decisions of this Board, which determined that certain establishments that feature privately organized dining events may not be subject to the law. The Appellant indicated that most functions are for members and their families and that all such rentals are booked pursuant to a written contract. There was testimony and documentation indicating that many of the events do not involve music or dancing. They further testified that at such events that feature music and dancing, a meal is the primary attraction. The representatives stated that most of the typical functions involve anniversaries, birthday parties, baby christenings and funeral collations. Appellants indicated that during the past year, the function hall was rented approximately 34 times. During such rentals, Appellant indicated that the first floor function area features a fixed bar that is used as a service bar for functions only. In addition, the Appellant testified that when entertainment is featured, it typically consists of a disc jockey for music and dancing purposes. The Appellants also testified that such events have a definite ending and starting time, that guests for such events are limited for each function by pre-arrangement, and that an on-site manager is present at all functions. The Appellant indicated that all functions are restricted to no more than 200 persons, per the rules of the Post.
- 7) Appellant has hired a professional consultant who has evaluated the characteristics of the building, including the occupant load and has concluded that the occupant load for the basement bar area should actually be increased to 110. However, the consultant indicated that the first floor function area should be decreased from 360 to 240 persons. The Board notes that the suggested changes, as of the date of the hearing, have not been approved by the Building Department as an amendment to the Certificate of Inspection. Accordingly, the relevance of such change to this case is merely speculative.
- 8) In support of the Medford Fire Department's determination, Chief Giliberti testified that the facility should be required to install sprinklers due to the following factors: the presence of a

mixed use assembly occupancy; the current occupant load of well over 100 persons; the basement bar/members' lounge is below grade with no windows and that the facility has no fire alarm system. He also indicated that he does not necessarily agree with the Board's prior decisions allowing the installation of sprinklers in certain portions of the building, rather than throughout the entire building.

- 9) Additionally, Chief Giliberti voiced his concerns regarding the number and location of the exits, which are shared by both the first floor function hall and the basement bar area.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, required the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s. 26G½. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes.” However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicate that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;

- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive and that the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department. However, notwithstanding the a lack of A-2 like characteristics typical of a nightclub, dancehall or discotheque, the statute also clearly applies to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

- 4) The function hall area of this building, located on the first floor level, has a legal occupancy of over 100 persons and is used for a wide variety of social events. It appears that many of these events can be classified as “organized private dining events” that feature a meal as the main attraction. Such “organized private dining events,” by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. In such situations the occupant load is not typically concentrated or crowded.
- 5) As the representative of the Appellant has correctly indicated, this Board, in previous decisions has determined that under certain circumstances, a portion of a place of assembly, which provides facilities for organized private dining events, may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of the certain characteristics of such dining events is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:
 - 1. The facility is used for events that feature a meal as the primary attraction.
 - 2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
 - 3. Each event has a definite starting and ending time.
 - 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
 - 5. There are no significantly low lighting levels, and

6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6th Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist.

- 6) Upon reviewing the evidence, the Appellant has met most of the characteristics listed above which would have allowed this board to make a determination that the first floor function area is not subject to the s. 26G½ sprinkler requirements. However, said function area clearly does not meet the “unconcentrated” occupant load requirement based upon the current legal capacity of 360 persons for said area. A determination that a function area is “unconcentrated” is a crucial consideration for this Board in determining the applicability of s. 26G½ in such facilities that feature “organized private dining events”.
- 7) With respect to the basement bar area, the Board finds that this portion of the building is currently used and designed as a bar, with a listed occupancy of 100 persons, and is therefore clearly within scope of s. 26G½. Appellants failed to provide any evidence which contradicts this finding. Appellants’ activity involving the possible alteration of this area and/or its occupant load is, at this time, speculative and is therefore not subject to consideration by this Board.

G) Decision

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Medford Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½.

The Appellant is hereby required to install an adequate system of automatic sprinklers throughout the building which houses the function facility and the bar areas. The small ancillary building attached to the main building is not subject to the sprinkler requirements of s. 26G½ as currently used.

Sprinkler plans shall be submitted to the Medford Fire Department within 90 days of the receipt of this decision. Installation shall be completed no later than November 15, 2008.

H) Vote of the Board

Maurice Pilette, Chairman
Paul Donga, Vice Chairman

Abstained from Vote
In Favor

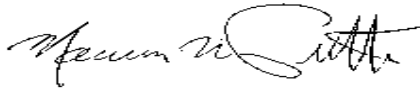
Stephen D. Coan, State Fire Marshal
Chief Thomas Coulombe
Peter Gibbons
John J. Mahan

In Favor
In Favor
In Favor
In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice M. Pilette, Chairman

Dated: November 28, 2007

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL,
RETURN RECEIPT TO:**

John J. Shea, Jr.
American Legion Post 45
321 Winthrop Street
Medford, Massachusetts 02155

Chief Frank Giliberti, Jr.
Medford Fire Department
120 Main Street
Medford, Massachusetts 02155-4510